IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

RONNIE WILLIAMS, Administrator of the Estate of WILLIE T. WALKER, Deceased,

PLAINTIFF,

VERSUS NO. GC90-186-S-O

NED HOLDER, Individually and In His Official Capacity as Sheriff of Sunflower County, Mississippi; SUNFLOWER COUNTY, MISSISSIPPI, and OHIO CASUALTY INSURANCE COMPANY,

DEFENDANTS/THIRD PARTY PLAINTIFFS,

VERSUS

STATE DEPARTMENT OF MENTAL HEALTH, et al.,

THIRD PARTY DEFENDANTS.

MEMORANDUM OPINION

This cause is before the court on the motion of defendants for summary judgment. Issued contemporaneously with this opinion are several orders which conclude other motions in this cause. Most pertinent in regard to the defendants' motion for summary judgment is the court order denying the defendants' motions to strike certain affidavits submitted in support of the plaintiff's response to this motion for summary judgment.

Summary Judgment Standard

On a motion for summary judgment, the court must ascertain whether there is a genuine issue of material fact. Fed. R. Civ. P. 56(c). This requires the court to evaluate "whether there is the need for a trial--whether, in other words, there are any genuine

factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 250 (1986). The United States Supreme Court has stated that "this standard mirrors the standard for a directed verdict...which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed." Anderson, 477 U.S. at 250-51 (citation omitted). Further, the Court has noted that the "genuine issue" summary judgment standard is very similar to the "reasonable jury" directed verdict standard, the primary difference between the two being procedural, not substantive. Id. at 251. "In essence...the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict - 'whether there is [evidence] upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the onus of proof is imposed.'" Id. at 252 (citation omitted). However, "[c]redibility determinations, the weighing of

the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255.

Facts

This is a wrongful death suit seeking damages and declaratory relief filed pursuant to 42 U.S.C. § 1983. The decedent, Willie T. Walker, died on July 12, 1990, in the Sunflower County jail of sudden cardiac death. The coroner's investigation revealed that the decedent's heart was enlarged one and one half times its normal size, and the walls of the heart were thickened which is evidence of hypertensive disease. The decedent suffered from hardening of the arteries, with a 80% blockage in the proximal lift artery and 50% blockage in the proximal right artery.

On July 2, 1990, the decedent's nephew, plaintiff Ronnie Williams, filed an affidavit and application for commitment with the Chancery Court of Sunflower County, Mississippi swearing that Willie Walker was mentally ill and in need of commitment to a mental institution. Special Master Jimmy Sherman entered an Order Issuing Writ to the sheriff of Sunflower County to take custody of Willie Walker and have him examined as set forth in § 41-21-69 Miss. Code Ann. (1972). Zelda Labovitz was appointed Willie Walker's attorney to represent his interests. Dr. R.N. Hurt and Dr. Phil Norsworth were appointed by Order of Appointment of Physician\Psychologist to make a full inquiry of the mental and

physical condition of Willie Walker and to report their findings in writing to the Chancery Court within 24 hours. A Certificate of Examining Physician/Psychologist was filed July 2, 1990, which concluded that Willie Walker was suffering from a disability and was in need of treatment by qualified mental health professionals. A hearing was held on July 2, 1990, at which Ronnie Williams testified that no family member or persons could control, supervise, or care for Willie Walker. The pertinent portion of the Special Master's order states:

> 7.) The Court finds from clear and convincing evidence that:
>
> . . . .
>
> K.) That Willie Walker had a mental illness of such a degree as to pose a danger to himself if left untreated and that Willie Walker was unable to provide reasonably for his needs; and that the nature and degree of the illness was such that commitment for further treatment at the Mississippi State Hospital would best meet the needs of Willie Walker and that a report of the results of such treatment be made in writing by the medical personnel treating Willie Walker within Twenty (20) days.
>
> IT IS, THEREFORE, ORDERED and ADJUDGED that the above numerated findings of fact be, and the same are hereby found to be facts and that the Respondent, Willie Walker, be committed to the Mississippi State Hospital for examination and/or treatment to be admitted at such time as the director determines that adequate facilities and services are available; said commitment to remain in effect of ninety (90) days unless terminated earlier provided by law.
>
> IT IS FURTHER ORDERED and ADJUDGED that the Respondent be placed in the custody of the Sunflower County Sheriff until such time as spaces become available in the Mississippi State Hospital.
>
> IT IS FURTHER ORDERED that the Respondent be confined as an emergency patient in the South Sunflower

> County Hospital and there be held until such time as a bed is available in the Mississippi State Hospital and given such treatment by a licensed physician as is indicated by standard medical practice (pursuant to the provisions of Chapter 41 of the Mississippi Code of 1972, as amended). In the event that Respondent shall become violent or unruly beyond the capacity of said hospital to handle said Respondent, he may be transferred to the Sunflower County Jail only upon further order of the Chancery Court of Sunflower County, Mississippi.
>
> At such time as a bed is available at the Mississippi State Hospital, the Sunflower County Sheriff shall transport the Respondent to the appropriate facility.
>
> SO ORDERED, ADJUDGED and DECREED on this the 2nd day of July, 1990.

The Mississippi State Hospital did not have a bed available. The South Sunflower County Hospital did not have open any of the rooms which had been reserved for mental commitment patients and refused to admit Willie Walker. Willie Walker remained until his death in the Sunflower County Jail waiting for a bed to become available at the South Sunflower County Hospital or Mississippi State Hospital.

The defendants maintain that they were not aware that the decedent was having any particular emergency medical needs which require attention. The plaintiff has submitted an affidavit of Charles Edwards McDaniels who was an inmate in the Sunflower County jail while the decedent was being housed there. He averts that he heard the decedent request medical attention for severe chest pains three days prior to his death and heard the decedent sporadically banging on his cell door trying to get the jailer's attention.

Section 1983 Liability of Sunflower County

To impose liability upon the county pursuant to § 1983, the plaintiff must prove the following: (1) a policy, (2) of one of the

county's policymakers (3) that caused (4) the deceased to be subject to a deprivation a constitutional right. Monell v. Department of Social Servs., 436 U.S. 658, (1978); Palmer v. San Antonio, 810 F.2d 514, 516 (5th Cir. 1987); Boston v. Lafayette County, 743 F.Supp. 462, 467 (N.D. Miss. 1990). The plaintiff asserts that Special Master Sherman, who has not been named as a defendant, and Sheriff Holder were policymakers for Sunflower County. Whether or not an official is a policymaker for purposes of § 1983 liability is a question of state law. See Pembaur v. Cincinnati, 475 U.S. 469, 483 (1986).

A. Special Master Sherman as Policymaker for Sunflower County

A county judge can be considered a policymaker "at least in those areas in which he, alone, is the final authority or repository of county power ...." Familias Unidas v. Briscoe, 619 F.2d 391, 404 (5th Cir. 1980). "Presumably, this rule also applies to a special master, who, pursuant to state law, is temporarily empowered to function as a judge with respect to particular duties." Boston, 743 F.Supp. at 470. But "[w]hen performing a judicial function by interpreting a state statute--which limits his discretion and is not merely a standardless grant of authority--a judge acts to **implement** state policy rather that **create** policy the local government of which he is a part." Id. (citing Familias Unidas, 619 F.2d at 404; Carbalan v. Vaughn, 760 F.2d 662, 665 (5th Cir. 1985); Bigford v. Taylor, 834 F.2d 1213, 1221-23 (5th Cir. 1988). This is the judicial function doctrine, which excludes as policymakers county officials who implement, within judicial

parameter, state law without discretion. Unlike the Texas judge in Familias Unidas, Special Master Sherman's authority was limited to performance of his judicial duties as authorized by state statute when he ordered the decedent committed to the custody of Sheriff Holder for transportation to the Sunflower County Hospital until such time as a bed became available at the Mississippi State Hospital.[1] "[T]he Special Master was interpreting a state statute which substantially limited his discretion, and he cannot be considered a county policymaker for purposes of § 1983." Boston, 743 F.Supp. at 471.

B. Sheriff Holder as Policymaker for Sunflower County

As directed by Mississippi Code § 19-25-69, "[t]he sheriff shall have charge of the courthouse and jail of his county, of the premises belonging thereto, and of the prisoners in said jail." In Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981), the Fifth Circuit stated:

> Mississippi law imposes a duty on sheriffs and jailers having custody "to exercise ordinary and

[1] Mississippi Code Annotated § 41-21-67(4) (Supp. 1989) provides that if a duly appointed special master:

> ...determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the [special master] may order that the respondent be retained as an emergency patient at any available regional mental health facility or any other available suitable location as the court may so designate pending an admission hearing and may, if necessary, order a peace officer or other person to transport the respondent to such mental health facility or suitable location. Provided, however, ... the respondent shall not be held in jail unless the court finds that there is no reasonable alternative.

> reasonable care, under the circumstances of each particular case, for preservation of [a prisoner's] life and health. This duty of care of one owing by him to the person in his custody by virtue of his office..."

Id. at 1379 (citations omitted). The Diamond court emphasized that a Mississippi sheriff "cannot escape his responsibility to take reasonable care of prisoners in his custody by simply making a casual examination of one who obviously needs medical attention." Id. at 1380 (citing Mississippi v. Durham, 444 F.2d 152, 157 (5th Cir. 1972). The parties do not dispute that Sheriff Holder is a policymaker for Sunflower County.

Supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability under § 1983. See Thibodeaux v. Arceneaux, 768 F.2d 737, 739 (5th Cir. 1985). "However a supervisor may be held liable if there exists either (1) his personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." Thompkins v. Belt, 828 F.2d 298, 304 (5th Cir. 1987) (citing Harvey v. Andrist, 754 F.2d 569, 572 (5th Cir. 1985).

> If Sheriff [Holder] did not knowingly disregard [Ronnie Williams'] pleas to see a doctor, he cannot be held liable unless he knew the jail's system was so deficient as to expose prisoners to substantial risk of significantly unmet serious medical needs--i.e., was unconstitutional--and failed to properly attempt to correct it, **and** unless his action or inaction in this respect caused [Williams'] injuries.

Thompkins v. Belt, 828 F.2d at 304. "Supervisory liability exists even without overt personal participation in the offensive act if supervisory officials implement a policy so deficient that the

policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional violation.'" Id. (citing Grandstaff v. City of Borger, 767 F.2d 161, 169, 170 (5th Cir. 1985) (quoting Monell v. Department of Social Servs., 436 U.S. 658 (1978)).

The plaintiff argues that Sheriff Holder knew of the decedent's request for medical attention, or reasonably should have known. But even if he did not have personal knowledge, the plaintiff argues that Sheriff Holder's policy of using inmate trustees and jailers, who have not even had minimum training to respond to requests for medical assistance, was the causation of the decedent's death. This is in essence the plaintiff's theory of failure to train and insufficient staffing, which the court discusses in detail later. Pursuant therewith, the defendants' motion for summary judgment in regard to the plaintiff's claims against Sheriff Holder in his official capacity is not well taken.

C. Per Se Constitutional Violation

The plaintiff argues that the custom and practice of detaining in the county jail patients who had been ordered to be given psychiatric treatment amounts to a policy of Sunflower County, and that the policy led to the deprivation of one of the decedent's constitutional rights. The United States Supreme Court "has long recognized that a plaintiff may be able to prove the existence of a widespread practice that, although not authorized by written law or express [county] policy, is 'so permanent and well settled as to constitute a 'custom or usage' with the force of law.'" St. Louis

v. Praprotnik, 485 U.S. 112, 127 (1988). Although the special master did not order the decedent detained in the Sunflower County jail, he clearly would have had the authority pursuant to Mississippi Code Annotated § 41-21-67(4), to do so, and it appears there was no other reasonable alternative.[2] "[G]overnment has a 'compelling interest in the emergency detention of those who threaten immediate and serious violence to themselves or others,' and must be permitted to detain such persons, provided the nature and duration of detention comports with constitutional parameter." Boston, 743 F. Supp. at 468 (quoting Lynch v. Baxley, 744 F.2d 1452, 1458 (11th Cir. 1984)). The defendants were not in a position to do anything else with the decedent. The decedent certainly could not be released. Although the decedent may have been placed temporarily in a private facility, failure to do so is not a constitutional violation. The decedent does not have a constitutional right to be detained in any particular location. See Olim v. Wakinekona, 461 U.S. 238 (1983).

State law provides for the detention of civilly committed mental patients in jail pending an available bed at a treatment facility. The Boston court clearly found that jail detention of a

---

[2] See also Section 41-21-77 Mississippi Code Annotated, which provides:

> If admission is ordered at a treatment facility, the sheriff, his deputy or any other person appointed or authorized by the court shall immediately deliver the respondent to the director of the appropriate institution; provided, however, that no person shall be so delivered or admitted until the director of the admitting institution determines that facilities and services are available.

pre-evaluated allegedly psychotic individual was not per se unconstitutional. The Boston court masterfully stated:

> The court is cognizant of no reason why a court may not, in the interest of societal safety, temporarily detain in jail an individual who, despite prescribed psychotropic medication, has exhibited violent tendencies.... If substantive due process is deprived, be it jail or mental health facility, the deprivation is caused by a failure to provide constitutionally adequate food, clothing, shelter, medical care and other safe conditions of confinement--....

Id. 743 F. Supp. at 469. Mere detention in a "jail" does not state a constitutional violation.

To demonstrate a liberty interest, the plaintiff must show that the decedent had a "legitimate claim of entitlement to it. Kentucky Department of Corrections v. Thompson, 490 U.S. 454 (1989). Liberty interests can be created by state statute. See Meachum v. Fano, 427 U.S. 215 (1976). However, the state law must employ "language of a unmistakenly mandatory character requiring that certain procedures 'shall', 'will' or 'must' be employed." Hewitt v. Helms, 459 U.S. 460, 471 (1983). The critical focus is whether the decedent had a legitimate interest a stake. Neither state law nor the specifics of Special Master Sherman's custody order create for the decedent a substantive constitutional right to be housed in a particular location.

It was not necessary to conduct another hearing when it was discovered that Sunflower County Hospital did not have a secured room in which to house the decedent which then made it necessary to detain him at the county jail. See Boddie v. Connecticut, 401 U.S. 371, 379 (1971) (due process clause mandates "that an individual be

given an opportunity for a hearing before he is deprived of any significant [liberty] interest."). The decedent was afforded a civil hearing prior to being detained. The procedural portion of the Due Process clause only requires that an individual be given an opportunity for a hearing prior to being deprived of a significant protected interest. See Parham v. J. R., 442 U.S. 584, 606-07 (1979); Goss v. Lopez, 419 U.S. 565, 579 (1979). Thus detaining the decedent at the Sunflower County jail was not a procedural or substantive due process violation. The issue is whether he was denied reasonable medical care while in the custody of the defendants which was a proximate cause of his death.

III. REASONABLE MEDICAL CARE

"A denial of medical care by a pretrial detainee alleges a deprivation of due process under the Fourteenth Amendment." Fields v. South Houston, 922 F.2d 1183, 1191 (5th Cir. 1991) (citing Pfannstiel v. City of Marion, 918 F.2d 1178, 1186 (5th Cir. 1990). The Fifth Circuit in Cupit v. Jones, 835 F.2d 82 (5th Cir. 1987), concluded "that pretrial detainees are entitled to reasonable medical care unless the failure to supply that care is reasonably related to a legitimate government objective." Id. at 85; See also Bell v. Wolfish, 441 U.S. 520, 523 (1979). "[W]hile a sentenced inmate may be punished in any fashion not cruel and unusual, the due process clause forbids punishment of a person held in custody awaiting trial but not yet adjudged guilty of any crime." Jones v. Diamond, 636 F.2d at 1368. The decedent's detention was not related to criminal charges. The Fifth Circuit has not addressed

whether the Cupit standard applies to persons who are being detained after having been civilly committed. "Like pretrial detainees, persons detained due to mental illness are shielded by the Due Process Clause because they are confined though not convicted of a crime." Boston, 743 F. Supp. at 473-74.

Dr. Steven T. Hayne, M.D., states in his affidavit submitted in support of the motion for summary judgment filed by the defendants, Ned Holder and Ohio Casualty Insurance company, that:

> 11. It is unlikely that any jailor, even one with medical training, could have predicted that the decedent was going to have a heart attack, **unless the decedent knew and verbalized what was happening or he exhibited classic symptoms such as chest pains, shortness of breath, nausea, vomiting or sweating.**

(Emphasis added.) In his affidavit submitted in response to defendants' motion for summary judgment, Charles Edwards McDaniels, who claims to have been in the jail at the same time as the decedent, states that he heard the decedent repeatedly complain of chest pains and request medical care. It is certainly a disputed material issue of fact whether the defendants were aware that the decedent was having chest pains and had repeatedly requested medical attention. Barring some legitimate governmental interest, which the defendants have not proposed nor which the court can conceive, failure to give the decedent medical assistance after being informed that he was having chest pains would be a deprivation of his constitutional right to reasonable medical care. Such conduct would also be deliberate indifference.[3]

[3] The Cupit court included within the presidential opinion an astute observation which the court believes is critical to the

The defendants have made three separate motions to strike affidavits submitted by the plaintiffs in response to the motion for summary judgment. The court is quite capable of discerning the admissible relevant evidence from that to which the defendants have objected. The court is able to do this without having to spend multiple hours with the parties' briefs on the subject. Summary judgment is not trial by affidavit. When a factual issue of material importance arises within the affidavits of the opposing parties, then summary judgment as to that issue simply is not appropriate. Attempts to discredit opposing affidavits highlight the disputed nature of the material issue. Accordingly, the defendants' motion for summary judgment as to the decedent's constitutional right to be provided reasonable medical care is denied.

QUALIFIED IMMUNITY

"The defense of qualified immunity is a bar to denial of medical care claims unless the plaintiffs demonstrate that the defendants' conduct was objectively unreasonable in light of clearly established law [at the time of the alleged incident.]" Pfannstiel, 918 F.2d at 1186. Sheriff Holder would be protected

---

case at bar.

> ...we recognize that the distinction as to medical care due a pretrial detainee, as opposed to a convicted inmate, may indeed be a distinction without a difference, for if a prison official acted with deliberate indifference to a convicted inmate's medical needs, that same conduct would certainly violate a pretrial detainee's constitutional rights to medical care.

Id. 835 F.2d at 85.

from personal monetary liability so long as his actions did not violate "clearly established [federal] statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); see also Anderson v. Creighton, 483 U.S. 635 (1987). This standard turns on the "objective legal reasonableness" of the official's conduct. Id. The objective reasonableness standard thus "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341 (1986).

> The Supreme Court recently "clarif[ied] the analytical structure under which a claim of qualified immunity should be addressed". We must first determine whether the plaintiff has "allege[d] the violation of a clearly established constitutional right." If he has, we then decide whether the defendant's conduct was objectively reasonable, because "[e]ven if an official's conduct violates a constitutional right, he is entitled to qualified immunity if the conduct was objectively reasonable".

Spann v. Rainey, 987 F.2d 1110, 1114 (5th Cir. 1993) (internal citations omitted).

The first step in the inquiry of the defendants' claim of qualified immunity is whether the plaintiff has alleged the violation of a clearly established right. See Siegert v. Gilley, 500 U.S. 226, 114 L.Ed.2d 277, 287 (1991). This inquiry necessarily questions whether or not the officer acted reasonably under settled law in the circumstances which were confronted. See Hunter v. Bryant, 502 U.S. 224, 116 L.Ed.2d 589, 596 (1991); Lampkin v. City of Nacogdoches, No. 91-4702, slip op. at 1091-9 (5th Cir. Nov. 18, 1993). The plaintiff alleges that both the

decedent's substantive and procedural due process rights, as protected by the Fourteenth Amendment of the Constitution of the United States of America, were violated. Specifically, the plaintiff alleges that the decedent was denied reasonable and adequate medical care while detained in the Sunflower County Jail, either because of the policy to use inadequately trained inmate trustees and jailers or by the gross negligence of Sheriff Holder himself.

It is well established that involuntarily committed detainees have a constitutional right to reasonable medical care while in custody. See Boston v. Lafayette County, 743 F. Supp. 462 (N.D. Miss. 1990); Hare v. City of Corinth, Slip op. No. 93-7192 (Oct. 13, 1994) ("clearly established constitutional duty to provide pretrial detainees with reasonable care for serious medical needs...."). But Sheriff Holder is not liable in his individual capacity unless he personally was aware of or reasonably should have known of the decedent's requests for medical attention. Sheriff Holder cannot be held liable in his individual capacity for the knowledge possessed by any of the inmate trustees, jailers, or other sheriff's department personnel, or for their negligent conduct, unless his failure to have supervised was gross negligence which caused the violation.[4] Bigford v. Taylor, 834 F.2d at 1220;

[4] This is distinguishable from Sheriff Holder in his official capacity, where the use of the inmate trustees may be a policy decision which either was a policy decision which was the proximate cause of the constitutional violation or is evidence of a conscious policy not to hire and train competent jail employees.

see also Hinshaw v. Doffer, 785 F.2d 1260, 1263 (5th Cir. 1986); Bowen v. Watkins, 669 F.2d 979, 988-89 (5th Cir. 1982).

The plaintiff has been unable to come forward with any evidence to support liability of Sheriff Holder in his individual capacity. Nothing suggests that Sheriff Holder knew or could have known of the decedent's request for medical attention. Additionally, there is no evidence that Sheriff Holder's supervision of the jail personnel was grossly negligent. The court notes that this is distinguished from the plaintiff's claims of failure to train jail personnel or of inadequately staffing the jail, wherein there is a material issue of fact that possibly rises to the level of being a policy which would impose liability upon Sheriff Holder in his official capacity, Sunflower County, and Ohio Casualty as insurer. Accordingly, the defendants' motion for summary judgment based upon the good faith qualified immunity of Sheriff Holder in his individual capacity, is appropriate.

FAILURE TO TRAIN

Plaintiff argues that the defendants are liable for their failure to train, or the inadequate training of the jail personnel to recognize and properly react to the reasonable medical needs of detainees. In conjunction, the plaintiff argues that the decision to use inmate trustees in the county jail, who have not been trained to react to medical requests, was a policy, custom, or practice which was the proximate cause of the unconstitutional denial of reasonable medical care. Inadequate police training will support liability under § 1983 where such a failure amounts to

deliberate indifference to the rights of persons with whom the police come into contact. Canton v. Harris, 489 U.S. 378, 388 (1989); Evans v. Marlin, 986 F.2d 104, 107 (5th Cir. 1993) (detainee suicide). Plaintiff's task is to show a policy or custom of inadequate training which is the "moving force" of the constitutional violation." Monell v. Department of Social Servs., 436 U.S. at 694; Palmer v. San Antonio, 810 F.2d at 516; Gagne v. Galveston, 671 F. Supp. 1130 (S.D. Tex. 1987). Ordinarily, inadequate training alone is not the moving force of injury because the police officer who "causes" the injury does not rely upon inadequate training as tacit approval of his conduct. Palmer, 810 F.2d at 516. Grandstaff v. Borger, 767 F.2d 161, 169 (5th Cir. 1985); Gagne, 671 F.2d at 1135. Obviously, mere conclusory allegations of grossly inadequate training do not make out a case of deliberately indifferent policy. Benavides v. County of Wilson, 955 F.2d 968, 973 (5th Cir. 1992); Rodriguez v. Avita, 871 F.2d 552, 555 (5th Cir. 1989). Evidence of understaffing, without more, is not proof of official policy. Anderson v. Atlanta, 778 F.2d 678, 687 (11th Cir. 1985); Gagne, 671 F. Supp. at 1135 (S.D. Tex. 1987).

In order to be a policy, "inadequate training must be a product of a conscious choice." Grandstaff, 767 F.2d at 169 (citing Monell, 105 S.Ct. at 2436 n.7). Regarding the element of causation, an isolated incident is not enough and not sufficient to show that a policy or custom exists. Palmer, 810 F.2d at 516. A county may not be held liable "merely on evidence of the wrongful

actions of a single [ ] employee not authorized to make city policy." Oklahoma City v. Tuttle, 471 U.S. 808 (1985). The decision to use inmate trustees and the failure to train the other jail personnel to respond to the decedent's request for medical attention are arguably the moving force of the failure of the decedent to get medical attention. Failing to summons medical care may be a result of inadequate training. There is a genuine material issue from which a trier of fact could conclude that Sunflower County had a custom or policy of inadequately training its law enforcement officers, as a consequence of deliberate indifference, to provide safe custodial confinement and proper medical treatment to detainees; and, such failure to train was the moving force in causing the decedent to be denied his Fourteenth Amendment due process rights. Consequently, the defendant's summary judgment motion on plaintiff's claim of failure to train is not well taken.

DECLARATORY RELIEF

"Before a court can properly award declaratory relief, the plaintiff must demonstrate 'a substantial continuing controversy between parties having adverse legal interests.'" Boston v. Lafayette County, 744 F. Supp. at 755 (quoting Emory v. Peeler, 756 F.2d 1547, 1552 (11th Cir. 1985)). "Additionally, the continuing controversy may not be conjectural hypothetical, or contingent; it must be real and immediate, and create a definite, rather than speculative threat of **future** injury." Id. (emphasis supplied). The plaintiff suffers no threat of future harm; hence, no "actual

controversy" exists to satisfy the requirements of the Declaratory Judgment Act, 28 U.S.C. § 2201. The plaintiff has remaining some theories of recovery against Sheriff Holder in his official capacity, Sunflower County, and Ohio Casualty. Any declaratory relief appropriate in regard to these claims shall be carried forward with the cause of action. The plaintiff is encouraged to cull any nonessential claims in the final pretrial order.

An order in accordance with this memorandum opinion shall be issued.

This the _____ day of October, 1995.

_____
CHIEF JUDGE